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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 10/659,101      | 09/10/2003  | John Geoffrey Chan   | 99047               | 4327             |

45980 7590 03/17/2006  
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EXAMINER

CHIN, RANDALL E

ART UNIT PAPER NUMBER

1744

DATE MAILED: 03/17/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

|                              |                                      |                                    |  |
|------------------------------|--------------------------------------|------------------------------------|--|
| <b>Office Action Summary</b> | <b>Application No.</b><br>10/659,101 | <b>Applicant(s)</b><br>CHAN ET AL. |  |
|                              | <b>Examiner</b><br>Randall Chin      | <b>Art Unit</b><br>1744            |  |

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 30 January 2006.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-15 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Information Disclosure Statement***

1. The listing of references in the specification is not a proper information disclosure statement. 37 CFR 1.98(b) requires a list of all patents, publications, or other information submitted for consideration by the Office, and MPEP § 609.04(a) states, "the list may not be incorporated into the specification but must be submitted in a separate paper." Therefore, unless the references have been cited by the examiner on form PTO-892, they have not been considered.

### ***Claim Objections***

2. Claims 8 and 12 are objected to because of the following informalities:

Claim 8, line 4, before "gripping member", it appears --first-- should be inserted.

Claim 12, line 2, consistent terminology should be used with respect to "generally" concave recessed regions.

Also in claim 12, it is not exactly clear what "planar fashion" means. It appears Applicant intends to mean in a plan view. Any appropriate changes should also be made to the specification for clarity and consistency.

Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the

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art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

4. Claims 10 and 11 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

The recitation in claim 10 that the first and second gripping members have “generally convex shapes” constitutes new matter. Such recitation also cannot be gleaned from the drawings, particularly Figs. 5 and 6 showing gripping member 120.

### ***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1, 2, 5, 6, 12 and 13 are rejected under 35 U.S.C. 102(b) as being anticipated by Beals 6,234,798 (hereinafter Beals '798).

Beals '798 teaches a toothbrush 10 in Figs. 1 and 2 comprising a “housing” formed from a first material (plastic as recited in col. 1, lines 60-61) and including a handle 12, a brush head 13, and a neck (Fig. 1) extending between said handle and said brush head, characterized in that said “housing” further includes a first gripping member 16 disposed along an exterior region of said housing, said first gripping

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member formed from a second material softer than said first material (col. 2, lines 35-43), said first gripping member having a first substantially concave recessed region on an exposed exterior surface thereof (Figs. 1 and 2), and a second gripping member 17 formed from said second material (col. 2, lines 35-43), said second gripping member defining a second substantially concave recessed region on an exposed exterior surface thereof (Figs. 1 and 2), whereby the first and second recessed regions are useful in assisting a user to grasp the handle during use of the toothbrush. As for the preamble reciting that the toothbrush is "electric," no patentable significance has been attributed to such a recitation which has been merely recited in the preamble

As for claim 2, said "housing" of said toothbrush defines a longitudinal axis, and said first and said second gripping members symmetrically disposed on said housing with respect to said longitudinal axis (Fig. 2).

As for claim 5, said second material has a Shore A hardness between about 30 and about 99 (col. 2, lines 35-41).

As for claim 6 reciting that each of said first and second gripping members is formed from a material selected from the group consisting of elastomers and rubber-based materials, Beals '798 teaches that said material can be either from the recited group (col. 2, lines 35-43).

As well as claim 12 is understood, said first and second generally concave recessed regions thereof having "generally" oval shapes when viewed in a planar fashion (Figs. 1 and 2).

As for claim 13, said first and second gripping members 16, 17 are separate and distinct from each other.

***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 3 and 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Beals '798.

As for claims 3 and 4 reciting specific dimensions for the first gripping member and for the first recessed region, such claimed values are well within the level of ordinary skill to provide for (if not already, as such claimed values appear typical) through routine optimization.

9. Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Beals '798 in view of Lang 6,422,867 (hereinafter Lang '867).

Beals '798 teaches all of the recited subject matter as previously set forth with the exception of the toothbrush further including a positionable actuator disposed in said housing for controlling operation of said toothbrush. Lang '867 teaches a handle arrangement which could be used in hand held oral hygiene devices such as electric toothbrushes and flossers (col. 1, lines 16-21) that includes various "gripping members"

(which include a second material softer than the first material of the handle as recited in col. 3, line 67 to col. 4, lines 1-2) as well as further including a positionable actuator disposed in said housing for controlling operation of said toothbrush. Given these teachings, it would have been obvious to one of ordinary skill in the art to have modified Beals toothbrush arrangement such that it is electric in form and incorporates a positionable actuator disposed in said housing as suggested by Lang '867 for controlling operation of said toothbrush.

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

10. Claims 1, 2, 5-7, 9, 12 and 14 are rejected under 35 U.S.C. 102(a) as being anticipated by Stvartak 6,601,272 (hereinafter Stvartak '272).

Stvartak '272 teaches a toothbrush in Figs. 1-3 comprising a "housing" formed from a first material (plastic) and including a handle 12, a brush head 20, and a neck 80 extending between said handle and said brush head, characterized in that said "housing" further includes a first gripping member 58 (Fig. 1) disposed along an exterior region of said housing, said first gripping member formed from a second material (elastomer as recited in col. 5, lines 16-36) softer than said first material, said first gripping member having a first substantially concave recessed region on an exposed exterior surface thereof (can be a depression as recited at col. 5, lines 1-8, if not already), and a second gripping member 60 (Fig. 1) formed from said second material (elastomer as recited in col. 5, lines 16-36), said second gripping member defining a second substantially concave recessed region on an exposed exterior surface thereof

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(can be a depression as recited at col. 5, lines 1-8, if not already), whereby the first and second recessed regions are useful in assisting a user to grasp the handle during use of the toothbrush. One can also clearly see first and second substantially concave recessed regions as shown in Figs. 1-3. As for the preamble reciting that the toothbrush is "electric," no patentable significance has been attributed to such a recitation which has been merely recited in the preamble

As for claim 2, said "housing" of said toothbrush defines a longitudinal axis, and said first and said second gripping members are symmetrically disposed on said housing with respect to said longitudinal axis (Fig. 1).

As for claim 5, said second material (elastomer) has a Shore A hardness between about 30 and about 99 (col. 5, lines 33-34).

As for claim 6 reciting that each of said first and second gripping members is formed from a material selected from the group consisting of elastomers and rubber-based materials, Stvartak '272 teaches that said material can be elastomer (col. 5, lines 17-36).

As for claim 7, said housing further includes a third gripping member (Fig. 3) disposed along an exterior region of said housing "between" (on the bottom side of the toothbrush shown in Figs. 2 and 3) said first and second gripping members.

As for claim 9, said third gripping member is formed from a material having a Shore A hardness between about 30 and about 99 (col. 5, lines 33-34).



As well as claim 12 is understood, said first and second generally concave recessed regions thereof having “generally” oval shapes when viewed in a planar fashion (Figs. 1 and 3).

As for claim 14, said first and second gripping members are symmetrically disposed on a rearward side (Fig. 3) of said housing so that said toothbrush may be used by both left-handed and right-handed individuals.

11. Claims 3 and 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stvartak '272.

As for claims 3 and 4 reciting specific dimensions for the first gripping member and for the first recessed region, such claimed values are well within the level of ordinary skill to provide for (if not already, as such claimed values appear typical) through routine optimization.

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

12. Claim 8 is rejected under 35 U.S.C. 102(a) as being anticipated by Lang '867.

Lang '867 teaches an electric toothbrush handle arrangement (see “Background” at col. 1, lines 16-21) comprising a “housing” 10 (Figs. 1-3) formed from a first material (plastic as recited in col. 3, lines 53-55) and including a handle 46, a brush head, and a neck at 74 extending between said handle and said brush head, characterized in that said “housing” further includes a first gripping member 55 (Fig. 2) disposed along an

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exterior region of said housing, said first gripping member formed from a second material (rubber as recited in col. 5, lines 8-11) softer than said first material, said first gripping member having a first recessed region where it fits in, a second gripping member 50 (Fig. 2) formed from said second material (rubber as recited in col. 3, line 67 to col. 4, lines 1-2), said second gripping member defining a second recessed region (Fig. 8), and a third "gripping member" (that surrounds switch 116 in Figs. 1 and 3) disposed along an exterior region of said housing "between" (a broad recitation) said first and second gripping members, said third gripping member has a positionable actuator 116 (Figs. 1 and 3) disposed therein for controlling operation of said toothbrush.

### ***Conclusion***

13. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The reference to Blaustein is relevant to a handle arrangement with a gripping member that includes an actuator therein.

14. Any inquiry concerning this communication or earlier communication from the Examiner should be directed to Randall Chin whose telephone number is (571) 272-1270. The Examiner can normally be reached on Monday through Thursday and every other Friday.

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If attempts to reach the Examiner are unsuccessful, the Examiner's supervisor, Richard Crispino, can be reached at (571) 272-1226. The number for Technology Center 1700 is (571) 272-1700.

The central fax number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



R. Chin



Randall Chin  
Primary Examiner  
Art Unit 1744